



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 2662-99
25 October 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Head, Separation and Retirement Branch, Headquarters, U.S. Marine Corps, dated 18 August 1999, a copy of which is attached, and the information you submitted in response thereto.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unable to conclude that you are entitled to reimbursement for the chiropractic treatments you received during the April 1997-November 1997 period. In this regard, it noted that your request for reimbursement is, in effect, a request for correction of your record to show that you were issued a notice of eligibility for disability benefits (NOE) at the conclusion of a period of active duty for special work in 1997. The Board was not persuaded that you became incapacitated during the 1 October 1996-31 March 1997 period, or that you were not physically qualified for release from active duty on 31 March 1997. In addition, it noted that an NOE is not normally available to a member of the reserve forces who incurs an incapacitation while on a continuous set of orders for thirty-one days or more. The Board also noted that a service member may be reimbursed for non-emergency care obtained from non-federal providers only in those cases where prior approval for the care has been obtained from the Office of Medical and Dental Affairs (OMDA). There is no indication in available records that you notified your command that you were undergoing chiropractic treatment, or that you requested approval thereof from the OMDA.

With regard to your requests for reinstatement of the NOE which was revoked on 12 March 1999, retroactive pay and allowances, and military disability benefits, the Board substantially concurred with the comments contained in the advisory opinion. The Board noted that under the provisions of 10 U.S. Code 640, the Secretary of the Navy was permitted to retain you in an active status beyond 1 February 1999, but not required to do so. The Board was not persuaded that your transfer to the Retired Reserve effective 1 February 1999 was improper or resulted in material error or injustice. The Board concluded that although you experienced severe back pain and other significant symptoms during the 11-25 January 1999 period, the available records do not demonstrate that you sustained a traumatic back injury or a new-onset lower back condition during that period, or that a preexisting back condition increased in severity beyond natural progression of the underlying disease process. The Board did not solicit an opinion from the Physical Evaluation Board because you are ineligible for disability evaluation processing due to your transfer to the Retired Reserve.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. It is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure